

Decision 02-10-045 October 24, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Santa Clara Valley
Transportation Authority for an order approving
safety appliances to be used at the at-grade
crossings of the Autumn Street, Delmas Avenue,
San Fernando Street and the San Fernando Station
pedestrian crossing (82D-3.1, 82D-2.9, 82D-2.8,
82D-3.0) by the light rail transit line of the Vasona
Light Rail Project in the City of San Jose, County of
Santa Clara.

Application 01-03-038
(Filed March 27, 2001;
amended August 20,
2002)

O P I N I O N

1. Summary

This decision grants the application of the Santa Clara Valley Transportation Authority (Applicant) for approval of safety devices and procedures for at-grade crossings of light rail transit (LRT) tracks in the City of San Jose. We also authorize installation of LRT crossings at the four locations set forth in the application. The latter authorization is made without prejudice to Applicant's challenge of the Commission's jurisdiction to approve the location and construction of these LRT crossings. The jurisdictional argument is being addressed in Application (A.) 01-01-003, and the decision of jurisdiction in that proceeding also will apply to Applicant in this proceeding. With that understanding of the disposition of the jurisdictional question, the protest of this application by the Commission's rail safety staff has been withdrawn. Staff's

protest was based solely on an assertion of Commission jurisdiction to approve locations and construction of LRT crossings.

2. Background

This application, filed originally on March 27, 2001, requested authorization to establish light rail transit tracks for at-grade crossing of Autumn Street, Delmas Avenue, San Fernando Street and the San Fernando Station pedestrian crossing in San Jose. The crossings are part of the proposed Vasona Corridor light rail transit extension extending from downtown San Jose to the Vasona Junction in the Town of Los Gatos.

Following diagnostic meetings with the Commission's Consumer Protection and Safety Division, Rail Crossings Engineering Section (staff), Applicant and staff reached agreement as to the warning devices and procedures for the at-grade crossings. Staff reported that only a jurisdictional challenge by Applicant, a legal issue, remains unresolved regarding these crossings. On August 20, 2002, Applicant filed an amended application¹ incorporating changes proposed by the Commission's staff but continuing to assert the jurisdictional argument as to the Commission's overall authority for approving the LRT crossings.

In its jurisdictional argument, Applicant takes the position that it is bound in this application only by Pub. Util. Code § 100168, which provides for Commission regulation "relating to safety appliances and procedures." Applicant argues that, because it is not a railroad corporation or street railroad

¹ The amended application was submitted for filing on December 14, 2001, but apparently was not received by the Docket Office for technical reasons. The filing was corrected on August 22, 2002.

corporation, it is not required under Pub. Util. Code §§ 1201 and 1202 to obtain Commission approval for the location or construction of its track crossings. Staff contends that Commission approval of crossing locations is required by §§ 1201 and 1202 and by Pub. Util. Code § 99152.

An identical jurisdictional argument has been raised by Applicant in its A.01-01-003 for an LRT crossing of Hamilton Avenue in the City of Campbell. A briefing schedule has been established in that proceeding, and briefing was to have been completed in September 2002, at which time the matter would be deemed submitted for Commission decision.

At a Prehearing Conference in this application conducted on August 16, 2002, Applicant and staff agreed that a proposed decision could issue in this case, dealing only with staff's approval of the safety devices and procedures at the four proposed crossings, without prejudice to the position of either party with respect to the Commission's overall jurisdiction of the proposed crossings. Both parties agreed to be bound by the final jurisdiction decision in A.01-01-003, including any decision that may be made by a court of competent jurisdiction.

3. Amended Description of Project

In its amended application, Applicant seeks approval of safety appliances to be used at the LRT tracks that cross Autumn Street, Delmas Avenue, San Fernando Street and the San Fernando Station pedestrian crossing at-grade.

The alignment of the proposed Vasona Corridor light rail transit extension is from downtown San Jose to the Vasona Junction in the Town of Los Gatos. The northerly terminus of the alignment is at the intersection of West San Carlos Street and Woz Way in downtown San Jose, where the light rail transit line connects to the existing Guadalupe Corridor light rail line. From this point, the

alignment extends to the west along West San Carlos Street to Delmas Avenue, passing under the SR-87 overpass.

The line extends north along the east side of Delmas Avenue to San Fernando Street, at which point the alignment turns west again. The line continues to the San Jose Diridon Station on an alignment to the north of San Fernando Street. The line crosses a new bridge over Los Gatos Creek. The segment west of Autumn Street, including the location where the line crosses existing San Jose Diridon Yard tracks, is underground. After crossing under the yard tracks at the San Jose Diridon Yard, the alignment returns to the surface and heads in a southerly direction along the west side of the Diridon Yard tracks. From a point just south of Park Avenue, the proposed alignment utilizes the existing Vasona railroad corridor. The project remains within the railroad corridor all the way to the Vasona Junction in Los Gatos.

4. Funding, Local Permits

Applicant states that the proposed project is expected to be funded in three phases. Phase I constructs the portion of the project from downtown San Jose to the Downtown Campbell Station. Phase 2 extends the line from the Downtown Campbell station to the Winchester Station. Phase 3 extends the line from the Winchester Station to the Vasona Junction Station in Los Gatos.

Applicant states that construction of the project serves the public by providing efficient transportation in a growing area of the Santa Clara Valley.

Pursuant to Pub. Util. Code § 100161, Applicant is authorized to utilize public streets or other city, county or state public ways, subject to encroachment permits from the affected jurisdiction, for the installation of transit facilities. Letters of intent attached to the application show that applicant has encroachment authorization to establish the light rail transit line over, upon,

under and across roadways of the City of San Jose and Caltrans. (*See Exhibit A of Amended Application.*)

5. Environmental Report

The Commission has been furnished a copy of the Final Environmental Impact Statement/Report (EIS/EIR) for the Vasona Light Rail Project. The public need to be served by the proposed project is described in the report. Mitigation measures were made a condition of the approval of the project. (*See Exhibit B of Amended Application.*)

Volume I of the Final Environmental Impact Report (EIR) discusses transportation and traffic impacts, concluding that there are no significant traffic impacts at Autumn Street, San Fernando Street, and Delmas Avenue with the introduction of the Vasona light rail line. Volume I at page 70 also addresses emergency vehicle response times, stating:

It is possible that emergency vehicles could be delayed at LRT crossings by the presence of an LRT train. Based on proposed gate and rail vehicle operations, the maximum delay due to LRT vehicle presence would be 56 seconds at the intersection of Race Street and Parkmoor Avenue. It is assumed that emergency vehicles would bypass queues of traffic and proceed across LRT tracks as quickly as possible (i.e., as soon as the crossing gate rises). Local street conditions often dictate which route an emergency vehicle utilizes, and therefore, emergency vehicles may choose alternate routes if operators perceive the delay to be too long.

The EIR concludes that there should not be a significant impact on emergency vehicle response times at Autumn Street, San Fernando Street, and Delmas Avenue.

The Santa Clara Valley Transportation Authority is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Pub. Res. Code §§ 21000 et seq. The Federal Transit Administration

(FTA) is the lead agency for this project under the National Environmental Policy Act (NEPA). A Draft Environmental Impact Statement/Report (DEIS/DEIR) for the Vasona Corridor Light Rail Transit Project was released to the public in November 1999, beginning the formal review period. In correspondence dated December 23, 1999, the Commission commented on the DEIS/DEIR, asserting its jurisdiction under Pub. Util. Code § 1200 et seq. Applicant and the Department of Transportation/FTA prepared a Final EIR/Final Environmental Impact Statement (EIS) in March 2000 in accordance with CEQA and NEPA. The EIS/EIR evaluated the proposed rail transit project and several alternatives. Public scoping meetings were held on April 14 and 15, 1999, at which the light rail project was discussed at length with local citizens in the surrounding communities. In addition, there had previously been a period of public comment where citizens were asked to submit comments and concerns regarding impact on their properties and other pertinent matters. Comments by the public, where feasible, were incorporated into the environmental documents and considered in the preparation of the EIS/EIR.

On May 4, 2000, the Santa Clara Valley Transportation Authority certified the EIS/EIR, adopted findings of fact, adopted a mitigation monitoring plan and approved the proposed project as the environmentally superior alternative and further stated that:

- a. The project will not result in any unmitigated significant effects on the environment.
- b. A EIR was prepared for the project pursuant to the provisions of CEQA.
- c. Mitigation measures were made a condition of the approval of the project.

d. A Statement of Overriding Considerations was not adopted for this project.

e. Findings were made pursuant to the provisions of CEQA.

A certification was made that the Final EIS/EIR with comments, responses and record of the project approval was made available to the general public at the VTA Environmental Analysis Unit, Building B, in the City of San Jose, on April 13, 2000.

On May 5, 2000, a Notice of Determination was filed with the State Office of Planning and Research, Sacramento, and with the County Clerk Recorder's Office, Santa Clara County. The notice, which is included in Appendix C of the application, advised all interested parties that Applicant was in compliance with Section 21108 of the California Public Resources Code. On June 5, 2000, the FTA signed the Record of Decision.

The Commission is a responsible agency for this project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's EIR or Negative Declaration prior to acting upon or approving the project. (CEQA Guideline Section 15050(b).) The specific activities that must be conducted by a responsible agency are contained in CEQA Guideline Section 15096. The site of the proposed project has been inspected by the Commission's Rail Safety and Carriers Division, Rail Crossings Engineering Section. Staff examined the need to construct the proposed crossings, as indicated in the exhibits attached to the application, and recommends that the application be approved.

The Commission has reviewed the lead agency environmental documents. The EIS/EIR included an analysis of potential environmental effects, including

impacts related to transportation and traffic, air quality, noise and vibration, energy, land use, socio-economics and environmental justice, vegetation and wildlife, water quality, floodplains, geology, hazardous materials, magnetic fields and interference, cultural resources, aesthetic considerations, safety and security, construction and growth-inducing impacts.

The EIS/EIR analyzed 35 potential environmental impacts in the above areas. Of that number, 17 were found to have no effect, were not substantial, or were potentially beneficial or beneficial. Another 18 were found to have potentially significant or significant effects. However, mitigation measures were adopted and will be implemented as specified by the lead agency to either eliminate or substantially lessen those environmental impacts. Safety and security, transportation and noise are within the scope of the Commission's permitting process. In particular, we have considered the following information:

The proposed project will reduce overall vehicle-miles-traveled and vehicle-hours-traveled in Santa Clara County. Reducing traffic congestion will also reduce auto emissions that degrade air quality. This is a beneficial impact because a decrease in miles and hours traveled reduces congestion, air pollution and energy consumption.

The lead agency EIS/EIR did not identify any impacts from the project related to safety and security. One significant transportation impact was identified at an existing railroad crossing located between Sunnyoaks and Hacienda Avenues. This will be mitigated to a less-than-significant level by pavement modifications or lane striping and signs on northbound Winchester Boulevard.

Noise impacts were identified as exceeding FTA thresholds at various residences along the alignment, as well as vibration levels that may exceed federal thresholds at those locations. These impacts would be mitigated to less-than-significant levels by measures including the construction of soundwalls, building modifications if required, and the use of vibration-dampening track construction

materials and/or trenches if required. In addition, special track design and lubrication will be employed to reduce wheel squeal.

As to each of the potentially significant or significant impacts identified in the EIS within the scope of the Commission's permitting authority and discussed above, the Commission finds that the lead agency adopted feasible mitigation measures to either eliminate or substantially lessen the impacts to less-than-significant levels.

6. Justification for At-Grade Crossings

The light rail transit tracks will cross the Autumn Street, Delmas Avenue, San Fernando Street and San Fernando Station pedestrian crossing at-grade. Applicant states that the at-grade crossings are the most financially and environmentally acceptable choice and are in keeping with the open access concept of light rail transit. Alternatives to at-grade crossings are depressing the streets below the tracks, depressing the tracks below street level, elevating the streets above track level and elevating the tracks above street level.

Applicant states that the impacts associated with either elevating or depressing the light rail tracks would likely be significant because this area contains numerous prehistoric and historic cultural resources. According to Applicant, this is a known sensitive area for archeological sites, including Native American burials, because of the proximity of Los Gatos Creek and the Guadalupe River. Elevating the tracks would result in visual impacts to known historic structures located adjacent to the alignment in this area.

Los Gatos Creek is located in the immediate area. According to Applicant, the creek contains sensitive riparian habitat, and endangered or threatened fish species are known to be present. Applicant states that depressing the light rail lines could result in significant impacts to the creek. Moreover, some of the main

communication trunk lines for the San Jose area lie under San Fernando Street. Depressing the line in this area would be costly and could result in short-term construction-related impacts to communications utilities.

Applicant states that alternatives to at-grade crossing would be much more expensive and would present problems of noise generation, aesthetic impacts and the possibility of flooding hazards caused by depressing rail or street facilities.

Applicant contends, therefore, that the separation of grades is impracticable.

7. Diagnostic Review

The grade crossings for the Vasona line have been reviewed as part of a Field Diagnostic Team Process, and the crossings at issue here have been reviewed by all relevant parties, including Commission staff, the City of San Jose and Caltrans. Comments by the parties, including recommendations by Commission staff, have been incorporated in the design of each grade crossing.

7.1 Autumn Street Crossing

Autumn Street is a three-lane roadway that functions as a one-way northbound couplet with Montgomery Street (one-way southbound) for access to and from I-280. The proposed light rail grade crossing will be a mid-block crossing. Light rail trains will enter and exit the tunnel under Diridon Station at this grade crossing on Autumn Street. The crossing will be gated to provide protection for motorists, and all traffic on Autumn Street will be stopped by gates during light rail movements. The crossing will have automatic pedestrian gates on the north side of the intersection. The gates will be used to control large volumes of pedestrian traffic during events at a nearby arena. Pedestrian

warning signs are to be placed on gate arms adjacent to all sidewalks crossing the tracks.

7.2 San Fernando/Delmas Crossing

San Fernando Street travels east to west and is one lane in each direction. Delmas Avenue is two lanes, one-way southbound away from the San Fernando/Delmas intersection (south leg) and one lane each direction on the north leg of the intersection. The proposed light rail line will cross the north leg of Delmas Avenue and the east leg of San Fernando Street. The mid-block crossing of San Fernando Street is about 50 meters east of the Delmas/San Fernando intersection. The crossings will be controlled by automatic gates. All traffic will be stopped during the light rail crossing movement. Pedestrian crosswalks will be placed on the west and south legs of the intersection, and a new sidewalk will be constructed along the north side of the light rail alignment from Delmas Avenue to the existing sidewalk on the north side of San Fernando Street. Pedestrian warning signs will be placed on railroad flashers adjacent to all sidewalks crossing the tracks.

7.3 San Fernando Station Crossing

The San Fernando Station has two side platforms. The eastern station entrance is at Delmas Avenue. The western entrance is a pedestrian crossing across the two light rail tracks that allow pedestrian access to the station. At the western entrance, the access from each platform will be protected by manual swing gates that require pedestrians to actively pull the gates open before crossing the tracks. In addition, pedestrian flashers will be positioned between the tracks, warning pedestrians to look both ways before crossing.

8. Request for Deviation

Applicant requests a deviation from General Order (GO) 75-C for sounding of a bell at the automatic crossing gates at Autumn Street, Delmas Avenue and San Fernando Street, and for the pedestrian gates at Autumn Street. Applicant asks that the bell be omitted from the pedestrian gates at Autumn Street, and that the bell from the remaining roadway gates ring when the automatic gates are descending, but cut-off when the gates have reached their horizontal position. Applicant states that the bell cut-off on the automatic gates will provide an adequate level of protection for the grade crossing since there will be an audible warning as the gates descend.

Applicant justifies its request for deviation by noting that all three streets are in residential zones, with residences in close proximity to the crossing gates. Applicant notes that it received a similar deviation from GO 75-C at the Whisman grade crossing on the Tasman West light rail line.

Staff has approved this request for deviation.

9. Discussion

As noted, Commission staff participating in the diagnostic field review meetings with Applicant and others to discuss appropriate warning devices for the crossings. Staff recommended that the crossings be protected by Standard No. 9 automatic gate-type warning devices as described in GO 75-C in lieu of the traffic warning system being proposed by Applicant. Applicant did not agree with the staff recommendations and, originally, filed its application seeking authorization for the use of traffic signals instead of automatic gates. In the amended application, Applicant has agreed to the staff recommendations.

The only issue remaining is Applicant's challenge to the Commission's jurisdiction to approve the locations and construction of the LRT grade crossings.

The parties have agreed that the jurisdictional issue will be addressed in A.01-01-003 and need not be further addressed in this proceeding.

Accordingly, we approve the amended application and the request for deviation from GO 75-C (for bell sounding at crossing gates) and find that the application meets the requirements of the Public Utilities Code.

Pursuant to Pub. Util. Code § 311(g), the parties have agreed to waive the 30-day period for comments on this decision. In Resolution ALJ 176-3061 dated April 19, 2001, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Staff's protest of Applicant's jurisdictional argument is referred to A.01-01-003. A public hearing in this proceeding is not required, nor is it necessary to alter the preliminary determinations made in Resolution ALJ 176-3061.

10. Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. At-grade crossings at Autumn Street, Delmas Avenue, San Fernando Street and the San Fernando Station pedestrian crossing in San Jose are part of the proposed Vasona Corridor light rail transit extension from San Jose to Los Gatos.
2. As part of its diagnostic analysis, staff has approved the safety devices and procedures for the four proposed light rail crossings.
3. Applicant contests and staff assert the Commission's jurisdiction over the location and construction of the LRT crossings.
4. At a Prehearing Conference on August 16, 2002, Applicant and staff agreed that a Proposed Decision could issue in this case without prejudice to the

position of either party with respect to the Commission's overall jurisdiction over the proposed crossings.

5. The jurisdictional issue is being briefed by Applicant and by staff and will be decided in A.01-01-003, pertaining to an LRT crossing of Hamilton Avenue in the City of Campbell.

6. Applicant has encroachment authorization from the City of San Jose and Caltrans authorizing the light rail crossings at issue here.

7. As a responsible agency, the Commission has reviewed the Final EIR and mitigating conditions issued by the Santa Clara Valley Transportation Authority.

8. Alternatives to at-grade crossings at the four locations would be impracticable in that they present problems of disturbing riparian habitat, impacting aesthetics, disturbing archeological sites and increasing the possibility of flooding.

Conclusions of Law

1. The application for approval of crossing protections and request for deviation at the at-grade light rail transit tracks in the City of San Jose should be approved.

2. The construction and locations of the LRT crossings should be approved without prejudice to the parties' positions on a jurisdictional issue being addressed in A.01-01-003.

3. The authority granted herein shall expire if not exercised within two years of the date of this order.

4. Construction and maintenance costs for the project shall be borne in accordance with an agreement to be entered into between the Applicant, the City of San Jose and Caltrans; should the parties fail to agree, the Commission upon

application will apportion the costs of construction and maintenance by further order.

O R D E R

IT IS ORDERED that:

1. The amended application of the Santa Clara Valley Transportation Authority (VTA) for approval of safety appliances and procedures at four at-grade crossings in the City of San Jose, as set forth in the application and its exhibits, and the request for deviation from General Order 75-C are approved.

2. The approval granted herein is without prejudice to the positions of the parties regarding the Commission's jurisdiction as to the construction and location of the at-grade light rail transit crossings, an issue that is being addressed in VTA's Application 01-01-003.

3. VTA shall provide the following crossing protections. At Autumn Street, VTA shall install two CPUC Standard No. 9 automatic gates for vehicles and two CPUC Standard No. 9 automatic gates on the northern quadrants for pedestrian protection. Delmas Avenue shall have two CPUC Standard No. 9 automatic gates installed for vehicular traffic and additional flasher units shall be installed on the No. 9 gates for pedestrian safety. San Fernando Street shall have two CPUC Standard No. 9 automatic gates installed for vehicular traffic, and the No. 9 gate in the southwest quadrant shall be equipped with an additional pair of flashers to protect the adjacent driveway. Safety for pedestrians at San Fernando Street shall be provided by the installation of CPUC Standard No. 8 flasher units and warning signs. The San Fernando Station pedestrian crossing shall be protected by manual swing gates and CPUC Standard No. 8 flasher units.

4. The approval granted herein shall expire if not exercised within two years of the date of this order.

5. Application 01-03-038 is closed.

This order is effective today.

Dated October 24, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners